

TENTATIVE RULINGS

FOR: April 4, 2012

Please note that the court will strictly enforce filing deadlines for papers filed in support of and in opposition to law and motion matters, and may exercise its discretion to disregard a late filed paper, pursuant to California Rules of Court, rule 3.1300(d).

When calculating filing deadlines for papers to be filed within a certain number of court days from a hearing date, parties should exclude court holidays.

Court Reporting Services - As a result of statewide budget reductions, official court reporters are no longer provided by the Court in proceedings for which such services are not legally mandated. These proceedings include civil law and motion matters. If counsel wish to have the hearing on their civil law and motion matter reported, they have two options:

- Elect to use the services of a private local court reporter that the Napa County Bar Association has arranged to be present for the duration of all scheduled law and motion hearing calendars. There is a fee paid by the party directly to the court reporter for this service, and arrangements for payment can be made on the day of the hearing. For further information about the Bar Association program including fees, [click here](http://napacountybar.org/court_reporting.php) (http://napacountybar.org/court_reporting.php)
- Arrange for a private court reporter of their choosing to be present.

Attorneys or parties should confer with each other to avoid having more than one court reporter present for the same matter.

PROBATE CALENDAR – Dept. C (Historic Courthouse)

Estate of Johnson

26-26246

PETITION FOR ISSUANCE OF LETTERS PROBATE ON ACCOUNT OF AFTER DISCOVERED PROPERTY

TENTATIVE RULING: The petition is GRANTED.

Estate of Parsons

26-58423

PETITION TO ADMINISTER ESTATE (INTESTACY)

TENTATIVE RULING: The petition is GRANTED.

CIVIL LAW & MOTION – Dept. C (Historic Courthouse)

In the Matter of Soto-Ruiz

26-57617

PETITION FOR ORDER AUTHORIZING COMPROMISE OF MINOR'S CLAIM
(Pr.C. 3500 et seq.)

APPEARANCE REQUIRED

Ruel v. Kaiser Foundation Health Plan

26-58574

PETITION FOR APPROVAL OF COMPROMISE OF MINOR'S DISPUTED CLAIM

APPEARANCE REQUIRED

Sunseri v. Maidenform Brands, Inc.

26-52359

PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT

TENTATIVE RULING: The motion is unopposed, appears proper, and shall be
GRANTED as prayed.

LNV Corp. v. Burdette, et al.

12UD00042

DEFENDANT'S MOTION TO STRIKE COMPLAINT

TENTATIVE RULING: Defendant moves to strike this unlawful detainer
complaint on the ground that the Notice for Possession was not proper. The motion is
denied for both procedural and substantive reasons. Defendant shall file an answer within
5 days.

Procedurally, defendant provided inadequate notice of this hearing. A motion to strike
filed in an unlawful detainer action is subject to ordinary rules of civil procedure,
meaning that it must be filed and served at least 16 court days before the hearing, with 5
calendar days added for service by mail. Here, defendant filed and served her motion on

March 26, 2012, with an April 4 hearing date. Thus, the motion is denied on procedural grounds.

Substantively, defendant asserts that because she is a tenant in the subject property sold at a Trustee's Sale, she was entitled to a 30 or 90 day Notice to vacate, but that the Notice attached the complaint is a 3 day notice to quit. In fact, the Notice for Possession, a copy of which is attached to the complaint and to defendant's motion, indicates that the Notice provides alternative notice periods: 3 days for the Trustor of the Deed of Trust, and 90 days for an occupant who is not the Trustor. Because the basis for the motion is contradicted by the evidence presented, the motion is also denied on substantive grounds.

Simpson v. Household Finance Corp., et al. **26-58319**

PLAINTIFF'S MOTION TO CONSOLIDATE

TENTATIVE RULING: Plaintiff's motion to consolidate this action with an allegedly related unlawful detainer action is denied without prejudice to re-noticing within the proper statutory timelines. Plaintiff has provided inadequate notice of this hearing. A motion to consolidate filed in an unlawful detainer action is subject to ordinary rules of civil procedure, meaning that it must be filed and served at least 16 court days before the hearing, with 5 calendar days added for service by mail. Here, plaintiff filed her motion on March 23, 2012, with an April 4 hearing date. The court also notes that the file contains no proof of service of the motion.

SPG Holdings, LLC v. Asera, et al. **26-57924**

(1) MOTION OF DEFENDANT ASERA GROUP, INC., TO QUASH SERVICE OF SUMMONS AND DISMISS THE COMPLAINT AS TO MOVING DEFENDANT

TENTATIVE RULING: The motion to quash is GRANTED.

Although it appears a website for the corporation did previously list the California office of the related LLC as its U.S. Office, there is no evidence that the corporation conducted any business in California. Thus, it appears the corporation maintained insufficient contacts in this state for the court to have jurisdiction over it.

(2) DEFENDANTS' DEMURRER TO COMPLAINT

TENTATIVE RULING: The demurrer is moot as to Asera Group, Inc., in light of the ruling on its motion to quash. As to the remaining defendants, the demurrer is SUSTAINED as to the first, second, third and eighth causes of action, with plaintiff having ten days leave to amend. Defendants shall have ten days thereafter to respond. The demurrer is OVERRULED as to the other causes of action.

In November of 2010, plaintiff entered into a commitment agreement with Green Tech Power Group, LLC, to invest in the creation of a solar power facility in American Canyon. The commitment letter included numerous conditions to complete fulfillment of the investment, which was to occur in stages. The first phase of the investment provided for plaintiff to pay \$100,000 for the exclusive right to own Green Tech Power Group upon fulfillment of all conditions. The investment did not proceed beyond the initial phase.

The first, second, third and eighth causes of action for breach of contract, common counts, promissory estoppel and specific performance all contemplate a promise by defendants to do something that it did not do. However, the complaint does not clearly allege what promises or contractual duties remain unfulfilled by defendants. The court is unable to determine on what basis plaintiff believes defendants were required to accomplish certain tasks by a particular date, to account for the \$100,000, or to return the money. Thus, the demurrer is sustained as to these claims, but with the opportunity for plaintiff to amend to provide the necessary allegations to support them.

The fourth through seventh causes of action all arise from allegations of fraud. The court finds the complaint alleges with sufficient specificity actionable misrepresentations that were made regarding Green Tech Power Group's ability to access and use an existing power substation on the site of the project. Thus, the demurrer is properly overruled as to these four claims.